Regulation of the Approved Housing Body Sector

Regulatory Impact Assessment

Housing (Regulation of Approved Housing Bodies) Bill 2015

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1. Statement of Policy Context and Objective

Policy Context

In the programme for government, Towards Recovery, Programme for a National Government, 2011-2016 a commitment was made to facilitate larger housing associations to access private sector funding for social housing. More recently Construction 2020 and the Social Housing Strategy 2020 affirmed the key central role in which approved housing bodies have been placed under the Housing Policy Statement published in 2011. This was in recognition of the proven track-record of the AHB sector in the provision of social housing.

AHBs consist mainly of voluntary or co-operative organisations registered under the Companies Acts, societies registered under the Industrial & Provident Societies Acts and/or Trusts incorporated under the Charities Acts. There are currently 535 housing bodies with approved status and they have provided over 28,000 residential units to date. A further 2,700 properties are leased and/or managed by AHBs.

In previous years, significant levels of capital funding were available to AHBs through the Department’s Capital Funding Schemes, namely the Capital Assistance Scheme (CAS) and the Capital Loan and Subsidy Scheme (CLSS, which has been stood down since 2011). To date over €2.8 billion has been paid to AHBs under CAS and CLSS.

It is no longer possible for the Exchequer to provide such high levels of capital funding. The Capital Loan and Subsidy Scheme has now been replaced by a new funding model based mainly on private finance supported by more modest levels of State funding (up to 30%).

While the Social Housing Strategy provides for additional funding of €3.8bn for the delivery of new social housing units, the new social housing provision will rely significantly on debt-finance and revenue-funded housing options such as leasing and on private investment into the sector. In this respect regulation is a critical tool in developing the capacity of the sector to borrow off balance sheet and in building confidence with lenders and investors to invest in the sector. A statutory regulatory framework for AHBs is seen as an important element of the infrastructure needed to support delivery under the Social Housing Strategy.

Building for the Future, A Voluntary Regulation Code for Approved Housing Bodies in Ireland, published in July 2013, represents a first step towards a statutory regulatory framework for the sector. To date, over 192 AHBs have signed up to the voluntary regulation code (VRC). In February 2014, a non-statutory, ad hoc, interim Regulatory Committee (iRC) was established for the AHB sector, to oversee the implementation of the VRC and to provide advice on the development of statutory regulation. The iRC is supported in its work by a dedicated Regulation Office within the Housing Agency and together, these comprise an interim regulatory structure for the sector pending the establishment of a statutory Regulator.

Objectives

- safeguard public investment in the sector,
- encourage private investment in the sector,
- help AHBs to manage risk and to focus on achieving best outcomes for tenants,
- encourage long-term strategic development of the sector and facilitate collaboration, alliances and mergers within the sector,
- contribute to the overall sustainability of the sector

**Housing (Regulation of Approved Housing Bodies) Bill 2015**

The proposed Bill will make provisions in a number of key areas, with an overall emphasis on safeguarding and improving governance and financial viability for the AHB Sector. Regulation has a key role in underpinning the financial health of the AHBs that are increasingly reliant on attracting private or loan finance to develop and refurbish homes. This brings with it risks, so it is important that the regulatory framework can ensure that such risks are being managed correctly and that action can be taken where they are not.

The very nature of social housing or subsidised rent makes a strong case for regulation, as tenants do not have the same choice of movement in housing. Therefore there is a need for regulation to protect tenants. There is also a need to protect the interests of the taxpayers who are investing in social housing and have a right to expect satisfactory returns. Regulation can help to secure this outcome.

The objective now is to provide a framework that will enable the AHB sector to grow, that will provide reassurance to the State, tenants, boards of AHBs, lenders and investors that the sector is governed well and is a stable and significant avenue for investment in the years ahead.
2. Identification and description of policy options

In response to the Government’s commitment to provide a regulatory framework that supports and enables the AHB sector to develop its capacity to deliver, the scope of regulation and the structure of the Regulator were key policy considerations.

2.1 Scope of Regulation

Option 1: Do nothing/Rely on existing regulation.

To do nothing would risk losing momentum on the progress the Department and the Housing Agency have made in working with the AHB sector to adapt to the new reality of reliance on debt-financing for housing development rather than 100% capital funding from the Exchequer.

Existing regulation is fragmented, incomplete and not fit for purpose in terms of the governance and financial management of the AHB Sector.

The absence of an AHB Regulator would be a serious impediment to the development of the sector. Providers of investment capital whether private institutions or public bodies such as the European Investment Bank have made it clear that they expect to see a credible independent regulatory regime in place.

Option 2: Regulate all aspects of the AHB sector.

This option would involve establishing a Regulator to oversee all matters relating to the AHB sector ranging from governance and financial viability to the oversight of tenancies and standards of accommodation. While this would mean that the regulatory system for AHBs would be comprehensive, creating such a body would be a significant undertaking that would cut across existing structures and provision.

The Residential Tenancies (Amendment) (No. 2) Bill 2012, which is currently before the Houses of the Oireachtas provides, inter alia, for the extension of the Residential Tenancies Act 2004 to the AHB sector. The PRTB has been overseeing the private rented sector since its establishment in 2004 and is now poised for the inclusion of AHB tenancy arrangements under its remit. With the enactment of the Bill, the regulation of tenancy agreements, including dispute resolution, for both AHB and private rented sectors, will take place in the one agency.

The current responsibility for implementation of the Housing (Standards for Rented Houses) Regulations 2008 (as amended) rests with local authorities. These standards currently apply to AHBs and local authorities have long standing experience and established structures in place in the area of implementing and enforcing these standards.
2.1 Scope of Regulation – continued

Seeking to establish a Regulator whose scope would extend to all of these aspects of regulation would have the effect of setting AHB providers and their tenants apart from other providers of social housing such as local authorities and private landlords.

Option 3: Regulate governance, financial management and performance of AHBs.

This option would involve regulating AHBs: at board level such as membership and the separation of powers between the Board and the Executive, and; at financial level having regard to the AHBs financial viability and well-being including assessing risk factors such as liquidity, gearing, sinking fund provision, use of overdrafts and levels of debt. This option would involve the setting of standards of best practice in relation to the governance, financial management and performance of AHBs by the Regulator and enabling AHBs to reach these standards.

Concentrating on the regulation of governance, financial management and performance of AHBs will give the proposed Regulator a clear focus and objective. Focusing on these aspects of the sector’s activity will provide significant assurance for lenders, creating confidence in the system of regulation which is of key importance for AHBs ability to access funds at affordable costs, in order to maximise public investment and deliver new homes. In addition this clear focus for the regulator will give certainty that investments made by the State and the private sector are secure as well as providing greater security of tenure for social tenants through the financial well-being of AHBs.

Under this option tenancy arrangements will continue, as planned, to come under the remit of the PRTB and standards of accommodation will continue to be monitored by Local Authorities.

Option 3 is the preferred option for the scope of the regulatory framework. It ensures a clear, unambiguous focus on the key aspects of regulation needed. Good governance cannot be underestimated and the literature supports the conclusion that shortcomings in governance are invariably the cause of problems, including financial difficulties, in organizations.
2.2 Structure of Regulation

Option 1: No change to existing structures
AHB’s are obliged to comply with the terms and conditions of the various capital funding and leasing schemes overseen by the Department of the Environment, Community and Local Government and have separate reporting responsibilities under the Companies Registration Office (CRO), Revenue Commissioners and Charities Regulator.

The issue of governance has gained greater significance, in recent times and the lack of a more refined regulatory structure of oversight of the sector is seen as an impediment to securing private finance for the sector. The existing regulatory framework, such as it is, is not fit for purpose. It is fragmented, incomplete and there is no single, accountable body responsible for regulating the governance and financial viability of the sector.

Option 2: Establish a quasi-independent regulator under an existing State body
In this option the regulator would be established as an “independent” Committee within an existing agency such as the Housing Agency. The Regulation Committee would be akin to an internal audit function within an organisation i.e. independent of the main body of the organisation and answerable only to the Board. A system such as this operates in the UK where the regulatory function for housing providers sits within the Homes and Communities Agency.
The Housing Agency is already established and carrying out an interim regulatory function for implementing the VRC. However the independence of the Regulator was central to submissions from consultations in drafting this Bill both in terms of feedback from stakeholders during public consultation phase and from the deliberations of the interim Regulation Committee (iRC).

In order to create an independent Committee structure this option would involve a complex statutory structure for regulatory functions and may not achieve the necessary level of independence that would satisfy private investors. This option may also present difficulties in terms of maintaining a clear separation of functions between different responsibilities of the Housing Agency. There would be the potential for conflict of interest between the regulation function and the supply function of the Agency. It is important that the regulation function is not only independent but is seen to be so.

**Option 3: Establish an independent AHB Regulator**

This option involves the establishment of a stand-alone independent entity with a suite of powers vested in it to ensure effective governance and financial management of the AHB sector. It would be structured in such a way that the Regulator will be fully independent from Government in the execution of its functions and have appropriate step-in powers in order to protect and uphold the stability of the sector as a whole.

This option would involve the establishment of an AHB Regulator and Board headed by an independent Chief Executive Officer.

In line with Government policy, efficiencies could be achieved through a shared-service arrangement with an existing State body. Payroll, superannuation, back office administration and accommodation services could all be provided by an existing State body, reducing both the initial set up and long term costs of the Regulator.

Option 3 is the preferred option as it strikes the balance between introducing an independent regulatory structure which will improve governance in the AHB sector, while minimising the ongoing cost to the exchequer. Political independence and the autonomy to act free from policy and funding considerations are fundamental to the integrity and the credibility of the Regulator and are key to attracting finance into the sector.
3. Analysis of costs, benefits and other impacts for each option

Option 1  No change to existing structures

Economic Costs/Benefits:
- No Compliance Costs
- Possible exposure in the event of failure to deliver on housing objectives of an AHB
- The benefits attached to doing nothing about the existing situation are not apparent.

Social Costs/benefits: There are no specific social benefits from option 1 however inability to attract private finance would have a negative effect on the capacity of the AHB Sector to produce social housing units.

Impact:
- Difficult to secure private investment
- Possible damage to integrity and reputation of AHB Sector
- Impaired capacity of AHB Sector to deliver
- Potential negative impact on social tenants in the event of an AHB failure

Option 2  Establish a quasi-independent regulator under an existing State body

Economic Costs/Benefits:
- General annual costs for regulation would be broadly similar to existing interim costs and there would be negligible start-up costs. Interim regulation costs are currently budgeted for under the Housing and Sustainable Communities Agency (Housing Agency) grant for funding (Circa. €600,000). The Housing Agency is already established and carrying out the regulatory function of the Voluntary Code for AHBs.
- Improved ability for the AHB sector to raise private finance however this benefit should be qualified by the fact that the quasi-independent structure of the Housing Agency of which Board members include Government Department representation, may impact negatively for some investors in terms of its independence from Government.

Social Costs/Benefits:
The Housing Agency may not be regarded by tenants and housing providers as fully impartial from Government. Nevertheless there would be some clear benefits in terms of the establishment of an oversight structure for the regulation of AHBs.

Impact
The overall impact of regulating under option 2 would fulfil the objective of introducing standards of governance and financial propriety to the sector. However, this approach may lead to accountability and transparency issues due to the complex reporting structures involved and would not meet the requirement for
independence of the Regulator. Impartiality in the regulatory approach was highlighted during consultation for this proposal.

Option 3  Fully independent AHB Regulator

Economic Costs/Benefits

- Initial and thereafter annual cost to the exchequer of circa €820,000 [This includes estimated costs to cover a staffing complement of 6 persons (€365,000), Administration and Overheads (€165,000), External Services (€200,000), AHB Regulation Board expenses (€90,000)]
- Transparent and comprehensive regulatory system leading to improved ability to raise private finance
- Efficiencies could be achieved through a shared service agreement with an existing State body.

Social Costs/benefits:
There will be clear social benefits to creating a new statutory body independent of Government.

Firstly, on the supply side, independent, statutory regulation will provide confidence in the stability of the AHB sector. This will provide security for continued Government investment, as well as attracting increased investment from the private sector.

Secondly, the establishment of an independent Regulator will provide a focused platform for the sector for their governance, financial management and performance responsibilities in what is at present a fragmented regulatory landscape.

Thirdly, independent oversight will involve direct accountability to the Oireachtas, providing openness and transparency for all stakeholders including social tenants.

Impact

- The case for option 3 is that a separate legal entity to regulate AHBs will have a clear focus on the regulatory system and a culture most appropriate to the social housing domain.
- Such an entity will be fully independent whereas existing bodies may be seen as having other priorities and or potential conflict of interest.
- Independent regulation will provide for more timely interventions in the event of an AHB encountering difficulties, thus providing for the increased likelihood of a positive outcome.
- It is considered that option 3 will provide for the sharing of best practice, offering expertise and capacity building in the areas of governance and financial matters.
- Finally, Option 3 will allow the Department to play a more strategic role in the provision of social housing by AHBs, with the regulation of the sector moving to the domain of an independent Regulator.
4. Consultation

4.1 Public Consultation

A draft Voluntary Regulation Code (VRC) - Building for the Future, which represents a first step towards statutory regulatory framework was published on the Department's website www.environ.ie on 8 August 2012 for public consultation. All interested parties were invited to make their views known and over 30 detailed submissions were received. There was broad support for the three core principles proposed, namely proportionality, transparency and accountability and that the regulatory function would be delivered independently, and not by the Department or the local authority system. There was also a consensus that any regulatory system should, to the greatest extent possible, not impose costs on the sector.

4.2 Regional Seminars

In 2013 the Department also attended and presented at Regional Seminars throughout the country organised by the Irish Council for Social Housing in order to consult and share information with all AHBs.

4.3 Financial Capacity Group

In June 2013 the Department established a Financial Capacity Group chaired by the Department with representation from AHB umbrella bodies such as the Irish Council for Social Housing, the National Association of Building Co-operatives, some larger AHBs, the Housing Finance Agency and the Housing Agency. The purpose of this consultative committee was to provide input towards agreed financial reporting structures that would become part of the voluntary code and inform statutory regulation.

4.4 Interim Regulation Committee

In February 2014 the Department established an interim regulation committee under the Housing Agency consisting of experts in housing, law finance and regulation. One of the key functions of this committee is to provide views and guidance to the Department on the format of any statutory regulation. Deliberations from the iRC included the following key recommendations:-

- that the regulator is independent of government
- that the Bill sets out the statutory objective of the regulator, the nature of the bodies to be regulated, the regulator's functions, duties and powers, and the responsibilities of AHBs in relation to the regulator
- that the Bill makes provision for the regulator to take whatever action it considers to be expedient or necessary to carry out the functions of the office set down in the Bill and/or fulfilling its stated objectives
- that the regulator should set, monitor, assess and report on standards in relation to the governance, financial management and performance of AHBs
- that the regulator is provided with sufficient information and inquiry powers
that the regulator is delegated authority through the new Bill to grant approved housing status and administer the register of AHBs

that authority is delegated to the regulator to determine regulatory standards through the development of the Voluntary Code for Regulation of AHBs into a Statutory Regulatory Framework for AHBs.
5. Enforcement and Compliance

The Bill provides for the following compliance powers to be vested in the Regulator:-

- Inquiry powers including requests from AHBs for information on various governance aspects such as membership of Boards, annual returns, financial forecasting, loan port-folio information and general housing activities of the AHB.

- Investigative powers which will allow the regulator access to any premises occupied by the AHB and any documentation which the regulator believes relevant to the inquiries.

- Assessment powers allowing the Regulator to make an assessment of an AHB’s financial well-being or standards of governance.

- Guidance powers allows the Regulator to issue guidance on any matter relating to housing services provided by the AHB and to set performance indicators to which it intends to measure progress towards meeting the standards set by the Regulator.

- Power to seek external advice where a risk has been identified.

- Publishing powers which will allow the Regulator to publish performance reports of AHBs.

- Intervention powers which are intended to allow the Regulator to intervene in many different ways according to the risk identified. Intervention paths include:
  - Face to face meetings with the regulator.
  - Setting of specific performance improvement targets.
  - Requiring AHBs to submit a performance improvement plan.
  - Appointment of an interim manager.
  - Suspension of officers or Board members.
  - Removal of officers or Board members.
  - Asset protection including asset transfer to another AHB.
  - De-register an organisation.

The Bill also provides, inter alia, for AHBs to adhere to certain obligations under the regulatory framework:

- AHBs operating in the provision of social housing will be obliged to register with the Regulator.

- AHBs must show compliance with governance and accounting standards set by the Regulator.

- AHBs must submit information to the Regulator as the Regulator determines.
- It is intended that AHBs will have a duty to notify or seek consent from the AHB Regulator of any change to their Constitution / Articles of Association; planned acquisitions / mergers; planned disposal of assets.
6. Review

It is intended that once the legislative framework is in place that it will provide for a requirement by the regulator to review the operation of the act, and any related enactments, and to provide advice and recommendations to the Minister for any amendments or alterations to the Act.